IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16942 of 2005
with
MISC. CIVL APPLICATION No. 2674 of 2005
with
CIVIL APPLICATION No. 8819 of 2005
with
CIVIL APPLICATION No. 8818 of 2005
with
CIVL APPLICATION No. 10985 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SURESHBHAI VANMALIBHAI PATEL & 389 - Petitioner(s)
Versus
SHREE CHALTHAN VIBHAG SAHAKARI KHAND UDYOG MANDALI - Respondent(s)

==========

Appearance :

MR SHIRISH JOSHI for Petitioner(s) : 1 - 10.
MR RAVINDRA SHAH for Respondent(s) : 1,
MR PRABHAV A MEHTA for Respondent(s) : 1,
MRS KANAN R SHAH for Respondent(s) : 1,
MR JV BHAIRAVIA for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 10/07/2006

ORAL JUDGMENT

1. Large number of different disputes between the petitioners on one side and the respondent no.1 Co-operative Society on the other, have come to the fore in this petition. An additional dimension is added by the private Respondent no.2. However briefly, it would be necessary to record the checkered history of the litigation leading to the present petition.

2. The petitioners are the members of respondent no.1-society claiming to be espousing the cause of about 222 members in all who have been providing the transport facilities for the transport of sugarcane cultivated by respondent no.1-society to the sugar factory. This group of litigants may be conveniently be referred to as “transport contractors”. Respondent no.1-society is a Co-operative Society of sugarcane growers and has a sugar factory situated in Surat District. Respondent no.2 is also the member of respondent no.1-society and opposes the arrangement between the transport contractors and respondent no.1-society by which the transport contractors have for a certain period struck a deal with the society of monopolizing the task of transporting sugarcane.

2.1 In the year 1991, the transport contractors seeking relief for confining the transport work of sugarcane between themselves had approached the Board of Nominees by filing a Lavad Case No. 509/1991. In

the said Lavad Suit a compromise was entered into between the transport contractors and the respondent no.1-society and the respondent no.1 agreed to assign the transport work to these persons for a period of 10 years. A consent decree was passed by the Lavad Court and accordingly these persons were given the work of transporting the sugarcane produced by the members of the society for the entire period from 1993 till 2003. This arrangement continued for the agreed period of 10 years without any major obstacles.

2.2 At the end of the 10 year period when the question of formulating a procedure for transporting the sugarcane came up, these transport contractors once again sought a degree of monopoly and approached Board of Nominees all over again by filing a Lavad Suit No. 489/2004. In this Lavad Suit again a compromise was entered into between the plaintiffs and respondent no.1-society. It may be noted that only 11 out of 222 transport contractors had actually filed the Lavad Suit. They were however claiming to be representing the entire group and had claimed that the Lavad Suit is filed in a representative capacity. To this aspect of the matter reference could be made at a later stage. Suffice it to note that once again between these plaintiffs who had filed Lavad Suit No. 489/2004 and respondent no.1-society a compromise was entered into. The parties, therefore, through a joint writing requested the Lavad Court to pass order in pursuance thereof. The salient feature of this

compromise was that the transport contractors would continue to receive the transport work for next three crushing season i.e. for the year 2004-2005, 2005-2006 and 2006-2007. There were other conditions of said compromise to which this Court is not directly concerned. The Board of Nominees upon a representation made by the plaintiffs and respondent no.1-society passed an order in terms of compromise pursis. So far as the transport contractors are concerned, therefore, the society agreed to continue the arrangement for a period of three years starting from crushing season for the year 2004-2005.

2.3 Respondent no.1-society never questioned either the compromise dated July, 2004 nor questioned the order passed by the Lavad Court on the basis of said contract dated 1/9/2004.

3. Respondent no. 2 herein in the meantime moved an application before the Lavad Court on 27/7/2004 seeking to join as party-respondent, since it was his case that the plaintiffs therein could not claim monopoly of the transport business. His application was not granted and in the mean time upon compromise pursis between parties, the Lavad Court passed the above mentioned order.

3.1 Since respondent no.2 wished to challenge the order passed by the Board of Nominees before the Co-operative Tribunal he moved an application seeking permission to appeal, since he was formally not

permitted to join in the proceedings before the Lavad Court. His application being Misc. Civil Application No. 491/2004 was allowed by the Co-operative Tribunal by order dated 6th December, 2004. While allowing the application the Co-operative Tribunal also passed certain interim directions with respect to the arrangement of transport of sugarcane. The petitioners herein, therefore, approached this Court by filing Special Civil Application No.16606/2004. The said petition came to be disposed of by learned Single Judge of this Court by order dated 11th July, 2005. The proceedings were remanded before the Tribunal to decide Misc. Civil Application No.491/04 filed by respondent no.2 herein in accordance with law and certain decisions cited at the bar.

3.2 This time around, the Tribunal by its fresh order dated 12th August, 2005 allowed the Misc. Civil Application of respondent no.2. The Tribunal further granted partial stay and also passed certain orders with respect to the arrangement of transport of the sugarcane. It is this order dated 12th August, 2005 passed by the Co-operative Tribunal on the remanded proceedings in Misc. Civil Application No. 491/2004 filed by respondent no.2 herein which the petitioners have challenged in this petition.

4. I have heard learned advocates appearing for the parties. Learned advocate Shri Joshi for the petitioners has made detailed submissions. In reply learned advocate Shri Bhairavia for respondent no.2 and learned advocate Shri Mehta for respondent no.1

have made detailed submissions. Learned advocates have taken me through the material on record.

5. Having heard learned advocates appearing for the parties and having perused the material on record, I find myself anguished at the litigious nature in which these proceedings have travelled from one forum to another from one Court to the other. Entire issue revolves around the question of granting transport contract for transporting the sugarcane produced by the members of respondent no.1 Co-operative Society from the fields to the sugar factory. It is stated that the sugarcane cutting and crushing season begins sometime in October at the conclusion of the monsoon season and lasts till the monsoon actually begins. In other words during the monsoon months the process of harvesting sugarcane and bringing the crop to the sugar factory would stop. For the rest of the period of the year such activities would continue unabated. The petitioners herein are espousing the cause of all transport contractors having pressed for a certain degree of monopoly in the transport arrangement. They have in fact enjoyed the degree of monopoly right since early 90's for 10 years between 1993-2003. This work was entrusted to them exclusively to the exclusion of all other agencies including other members of the society which may have such aspirations. After the end of the period of 10 years they managed to get an extension of another three years. All this while respondent no.1-society was a willing partner in striking this monopoly. For whatever reason or of sagacity, necessarily compulsion may have driven respondent no.1-society to grant a degree of monopoly to the petitioners and

other transport contractors, the same has continued for nearly 12 years. Initially for the period between 1993-2003 by virtue of the first spell of compromise between the parties thereafter two more years have passed and this arrangement has continued almost unchanged by virtue of fresh agreement entered into between the representatives of the transport contractors and respondent no.1-society before the Board of Nominees which got formalised through a consent award being passed.

6. Respondent no.2 and some other similarly situated contractors who also are in a position to offer transport facilities have been clamoring for being granted such contracts. It is their stand that the society cannot permit limited members to monopolise the work and there should be more equitable system of selecting the contractors. It is their stand before the Lower Courts, as well as, before this Court that the Society had no authority to compromise with the transport contractors which would ensure that all other similar contractors would be excluded from the consideration of grant of the contract.

7. These are some of the parameters which come to my mind straight away while deciding these issues. I find that in this complex situation made further complex by virtue of series of litigations and different stand taken by different persons at different stages, a way has to be found out to break the dead lock and to find a way out of this seemingly needless source of litigation.

8. With this background in mind, I have perused the order passed by the Co-operative Tribunal which has been impugned in this petition. At the threshold it can be noted that the order cannot be sustained legally. The Tribunal made its impugned order while deciding Misc. Civil Application No.491/2004 filed by respondent no.2 as per the directions of this Court in its order dated 11/7/2005 passed in Special Civil Application No.16606/04 and has enlarged the scope of the proceedings. Primarily, it was the task on hand before the Tribunal to decide whether respondent no.2 should be permitted to appeal against the order passed by the Board of Nominees and thereafter to take up the issues regarding interim arrangement and the final hearing of the appeal that respondent no.2 should be permitted to file. At one go the Tribunal considered all aspects of the matter till then arising and some of which were yet to arise for its legal consideration. The Tribunal, therefore, committed an error in virtually allowing entire proceedings of respondent no.2 while still being at the very threshold whether respondent no.2 was required to be permitted to prosecute his appeal or not.

9. There is yet another aspect of the matter which would render the impugned order unsustainable. More than once the Tribunal was prompted to observe that the respondent no.1-society was compelled to enter into a forced agreement. I fail to understand the base of such observation and conclusions. At no stage the society had ever questioned its decision to

compromise the issue with the petitioners. At no stage before the Board of Nominees, before the Co-operative Tribunal or even before this Court respondent no.1-society had ever adopted the stand that its consent was not free. Respondent no.1 had more than sufficient opportunity at every stage of this litigation to express its reservation about its consent not being free if respondent no.1 had any doubt about it. Respondent no.1 thus not having even remotely suggested any anxiety on its part to back-out from the compromise, it was not open for the Tribunal to draw conclusion which was not based on material on record to hold that the consent of respondent no.1 was not free. Besides the respondent no.1 not making an attempt even remotely to withdraw from such consent, there was no other material before the Tribunal to draw such a conclusion. In my view, therefore, the Tribunal in its anxiety to do total justice ignored the material on record and arrived at conclusion which was based on conjunctures and unsupported by any evidence on record.

9.1 There is yet another reason which convinces me that the impugned order calls for interference. The respondent no.1-society had entered into a compromise with the transport contractors. Respondent no.1-society never sought permission to withdraw from its stand. Despite this, it was perhaps open for the Board of Nominees at the first instance and for the Co-operative Tribunal in further proceedings to refuse to recognize such a compromise for valid reasons. This however could not have been done at an interim stage when once the Board of Nominees found

nothing objectionable about the compromise between the parties and based its award thereon. By the impugned order the Tribunal virtually disposed of the pending proceedings before it by passing an order purported to be an interim order. One may not lose sight of the fact that respondent no.1-society is a Co-operative Society and not a State or its agency. Strict rigid requirement of equality enshrined in Article 14 of the Constitution of India, therefore, perhaps need not be expected from respondent no.1. Respondent no.1 in its wisdom found that earlier arrangement which had lasted for so long between the transport contractors and respondent no.1-society may be renewed for a further period of three years. It was perhaps open for the society for valid consideration to arrive at such a decision. The same could not have been annulled by the Tribunal by an interim order.

10. Considering all these aspects of the matter, I find that the impugned order passed by the Tribunal cannot be sustained. The same is, therefore, required to be quashed.

11. As noted earlier with some concern, I have noted the series of litigations and it would be my paramount intention to ensure that as far as possible there should be no needless litigation in this regard.

12. Learned advocate Shri Joshi for the petitioners submitted that the petitioners herein may be only 11 in number but they represented entire group of

transport contracts. Any order that this Court may pass and any concession with the petitioners may offer would bind all such transport contractors though they may not be before this Court. In fact even the Board of Nominees treated the proceeding as one in the nature of representative character.

13. In view of the above situation, I find that while setting aside the order passed by the Tribunal, certain observations are called for to meet the ends of justice.

13.1 The fact that the petitioners and other transport contractors have virtually monopolized the business of transport in sugarcane is not in dispute. Such monopoly to the exclusion of other members of the society does not appeal to the Court and it offends the very basic sense of equality and justice. No reasons are put forth either by the petitioners or respondent no.1-society, to confine the grant of contracts amongst this group. There may be equally efficient, resourceful and competent contractors offering same service at similar rates. Such contractors who are members of the society cannot be kept out of consideration simply because some other persons have been doing similar work since certain years. Under no circumstances such monopoly to the total exclusion of all others can be enforced. Respondent no.1-society itself ought not have agreed to such terms. However, having so agreed for 12 long years, I do not see any reason to disturb the situation for one last year when the term of the agreement between the parties will be over.

Respondent no.1-society had in fact entered into a written agreement and invited order from the Board of Nominees and agreed to grant fresh term of three years from the year 2004-2005 to 2006-2007 to the transport contractors. To put an end to the entire litigation and further speculation, I find it appropriate that this may be continued for a year more. This would be necessary in view of the fact that respondent no.1-society having once agreed to these terms and conditions has never sought to retract from the said position.

13.2 In the conclusion while, setting aside the order passed by the Tribunal on 12th August, 2005 in Misc. Civil Application No.491/04, it is further provided that the arrangement between the transport contractors and respondent no.1-society may continue for the next crushing season as per the agreement and the order passed by the Board of Nominees. However at the end of the season of year 2006-2007 it will be open for respondent no.1 to follow a new formula and assign contract for transport on the basis of a just and equitable system which would take into consideration not only the present petitioners, other transport contractors as well as other members of the respondent no.1-society which would offer similar service. It would be open for respondent no.1 to follow a procedure to verify the credentials of such contractors and to provide for method of filtering out the incompetent or ineligible contractors.

13.3 It is jointly stated by learned advocates appearing for the parties that through certain

interim orders passed by this Court by way of ad hoc arrangement not only the 222 transport contractors, but additional other approximately 58 contractors were also permitted to participate in the transport work for the previous crushing year. I see no reason to disturb this position for one more year.

13.4 It is made clear that at the end of the period covered under the order passed by the Board of Nominees i.e. at the end of crushing season for year 2006-2007, it will not be open for the petitioners and other “transport contractors” to agitate before the Courts below that they must get fresh contracts on monopoly basis to the exclusion of all other such service providers. No such contention will be permitted to be raised.

14. In the result, subject to above observations and directions, the petition is allowed. Rule is made absolute. No costs.

15. In view of the orders passed in the main matter there is no necessity to pass any orders in these Civil Applications, same are disposed of accordingly.

(Akil Kureshi, J.)

/smita/